

Serial No. 10/583,673  
Reply to Office Action Dated 3/20/09

PF030182  
Customer No. 24498

### REMARKS

Claims 1-9 are pending in the Application. Claim 1-9 are rejected by Examiner. Claim 9 has been cancelled. A new claim 10 has been added. No new matter has been added.

#### **Amendments to the Claims**

Claim 9 has been cancelled. A new claim 10 has been added. Claim 10 recites a computer readable medium encoded with a computer program. Support for this can be found on page 3, line 32 through page 4, line 1.

No new matter has been added.

#### **Claim Rejections Pursuant to 35 U.S.C. §112**

##### Claim 9

Claim 9 has been rejected under 35 U.S. C. §112, first paragraph, as failing to comply with the enablement requirement because claim 9 recites a "device" which is not described in the specification. Claim 9 has been cancelled in this response rendering the rejection to claim 9 moot.

#### **Claim Rejections Pursuant to 35 U.S.C. §101**

##### Claim 9

Claim 9 has been rejected under 35 U.S. C. §101 as reciting apparatus using "means plus function" claim language while the specification does not disclose a corresponding physical structure. Applicants would like to thank the Examiner for the suggestions regarding claim 9 and have decided to cancel claim 9 and add a new claim 10 reciting as a computer readable medium which was indicated by the Examiner as a suitable format for claim 9.

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Claims 1-8

Claims 1-8 have been rejected under 35 U.S. C. §101 as not falling within one of the four statutory categories of invention. Applicants respectfully traverse the rejection.

As announced by the Court of Appeals for the Federal Circuit in the recently decided case *In Re Bilski*, 545 F. 3d 943, 953 (Fed Cir. 2008), the appropriate test for determining compliance with 35 U.S.C. §101 is the “machine or transformation” test as elucidated by the U.S. Supreme Court in *Benson*, 409 U.S. 70. In particular, to be eligible for a patent under 35 U.S.C. §101, a process must be tied to a particular machine or transform a particular article to a different state or thing.

Applicants maintain that claims 1-8 clearly satisfy the “transformation” prong of the machine or transformation test as set forth in *Bilsky* because the process transforms an image into a saliency map. The examiner should appreciate that the transformation of the image recited in claim 1 does not constitute a mental process that lacks significant physical steps.

As part of the Applicants claimed process, the saliency map is created thanks to the physical image properties, such as luminance and chrominance components.

Obtaining such properties of an image cannot be simply done as a mental process and requires the physical properties of the image. Moreover, Applicants’ claimed process uses also the properties of human vision.

On this basis, the examiner cannot simply reject applicants’ claims as lacking significant physical steps.

Applicants’ claimed process recited in claim 1 is limited to a practical application of a fundamental principle, namely the physical properties of an image to extract the salient parts of this image. Since applicants’ method is directed to the creation of an image saliency map, based on the physical properties of that image, applicants’ claims are thus limited to a visual depiction of a physical object, constituting a ‘safe harbor’ as

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established by the Federal Circuit in *Bilski* (545 F. 3d 943 at 963). On this basis, applicants' claims 1-8, as written fully comply with 35 U.S.C. §101. Applicants respectfully request withdrawal of that rejection.

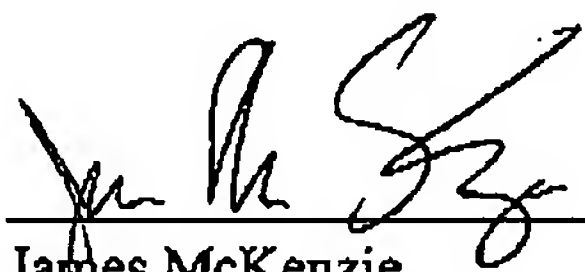
### CONCLUSION

Applicant respectfully submits that the amended pending claims patentably define over the cited art and respectfully requests reconsideration and withdrawal of the 35 U.S.C. §103 rejection of the pending claims. Renewed reconsideration for a Notice of Allowance is respectfully requested.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 07-0832 therefore.

Respectfully submitted,  
Olivier LeMeur, et. al.

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